

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, May 9, 2011

CASE NUMBER: C15-2011-0048

☒ Y ☐ Jeff Jack
☒ Y ☐ Michael Von Ohlen
☐ - ☐ Nora Salinas
☒ Y ☐ Bryan King
☒ Y ☐ Leane Heldenfels, Chairman
☒ Y ☐ Clarke Hammond, Vice Chairman
☒ Y ☐ Heidi Goebel
☒ Y ☐ Melissa Hawthorne

APPLICANT: David C., Cancialosi

OWNER:

ADDRESS: 3207 CHURCHILL DR

VARIANCE REQUESTED: The applicant has requested a variance to decrease the minimum side yard setback requirement of Section 25-2-492 (D) from 5 feet to 4 feet in order to maintain a single-family residence in an "SF-3-NP", Family Residence – Neighborhood Plan zoning district.

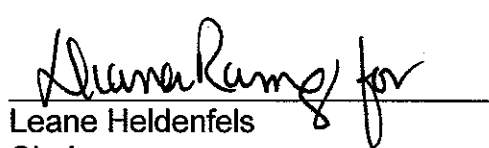
BOARD'S DECISION: The public hearing was closed on Board Member Michael Von Ohlen motion to Postpone to June 13, 2011, Board Member Bryan King second on a 7-0 vote; POSTPONED TO JUNE 13, 2011.

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:

(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:


Susan Walker
Executive Secretary


Leane Heldenfels
Chairman

ROW # C15-2011-0048

CITY OF AUSTIN ROW-10575808
APPLICATION TO BOARD OF ADJUSTMENT TP-0119001009
GENERAL VARIANCE/PARKING VARIANCE

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

WARNING: Filing of this appeal stops all affected construction activity.

STREET ADDRESS: 3207 Churchill Drive

LEGAL DESCRIPTION: Subdivision - LOT 15 WESTWOOD RIDGE ADDN

Lot(s) Block Outlot Division N/A

I/We Richard Archer on behalf of myself/ourselves as authorized agent for

 affirm that on April, 4
2011,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

 ERECT ATTACH COMPLETE REMODEL X MAINTAIN

SF3 492(d) side yard setback encroachment of (1) one foot.

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

SF-3-hp

Windsor Road
N.P.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The owner and builder worked with numerous surveyors to determine the correct lot line. Upon final determination of the side lot line, a foundation was poured. Upon further discussion with the adjacent owner, it was determined via a forensic surveyor that the previous lot line was off by approximately 6"-10", causing the encroachment of the already-poured foundation. It was determined the lot lines are askew due to shifting pins along the front and rear of Churchill Dr, extending all the way to Bryker Woods Elementary, where the original pins from the 1940's are covered by COA ROW. The COA permitted structure meets all other code regulations. Movement of the foundation and rear deck beams and piers would significantly impact an existing heritage tree. See enclosed letter from private sector arborist.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

The surveys performed by two previous surveying firms were based on a survey(s) performed in 1937, 1938, and 1940. Since that time the relative markers have shifted due to environmental reasons such as soil movement, corrosive action of clay type found in this vicinity, and construction by the COA of a Sanitary Sewer line in 1957 that resulted in concrete covering the original pins used to identify specific lot lines along the east side of Churchill Dr. Thus, the subsequent surveys performed for the purposes of identifying the correct lot line between 3207 and 3209 Churchill Dr were incorrect until such time a forensic surveyor, Mr. Kent McMillan performed specific and lengthy work to identify the correct property line. Please see report enclosed.

The slope and width of the lot have driven the design of the structure. There is a steep grade on the rear of the property, where a protected heritage tree resides. The steel beams and bell piers supporting the deck area are already in place and passed the tree inspection by the COA Arborist. Removal of the steel piers to accommodate the minor encroachment will perform more damage to the Heritage tree's root system. The existing foundation is such that it follows the sloping grade of the lot along the rear and is required to support the main structure. Removing part of the encroaching foundation will alter the entire architectural design, technical engineering, and materials already ordered to match the city-approved permitted design.

- (b) The hardship is not general to the area in which the property is located because:

The lot line between 3207 and 3209 is the primary lot line impacted to the extent that a new home is being built as per the forensic surveyor's report, causing the proposed structure to be located within 4.3' and 4.08' from the side property line, or no closer than

1' from the property line at any time. All homes along the east side of Churchill are situated on their respective lots so as not to be impacted by this small movement of a side property line, thus creating no legal non-complying structures as far as we can tell.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The COA approved structure is in keeping with the neighborhood and has been reviewed by the Bryker Woods HOA. No one has objected to the style or shape of the classic craftsman style design as it fits within the aesthetic fabric of existing homes.

Allowing the existing foundation to existing less than 1 foot from the side property line will not adversely impact the adjacent neighbor in terms of drainage or runoff or any other conceived way. The two neighbors have worked hard to support each other during this process.

PARKING: (Additional criteria for parking variances only.) **N/A**

<p>NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.</p>

APPLICANT CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____
Mail Address _____

Printed David Cancialosi
Phone _____

OWNERS CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____

Mail Address 714 West Annie, Unit A, Austin, Texas 78704

Printed Richard Archer (512) 689-6498
Date April 4, 2011

1' from the property line at any time. All homes along the east side of Churchill are situated on their respective lots so as not to be impacted by this small movement of a side property line, thus creating no legal non-complying structures as far as we can tell.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The COA approved structure is in keeping with the neighborhood and has been reviewed by the Bryker Woods HOA. No one has objected to the style or shape of the classic craftsman style design as it fits within the aesthetic fabric of existing homes.

Allowing the existing foundation to existing less than 1 foot from the side property line will not adversely impact the adjacent neighbor in terms of drainage or runoff or any other conceived way. The two neighbors have worked hard to support each other during this process.

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Mail Address _____

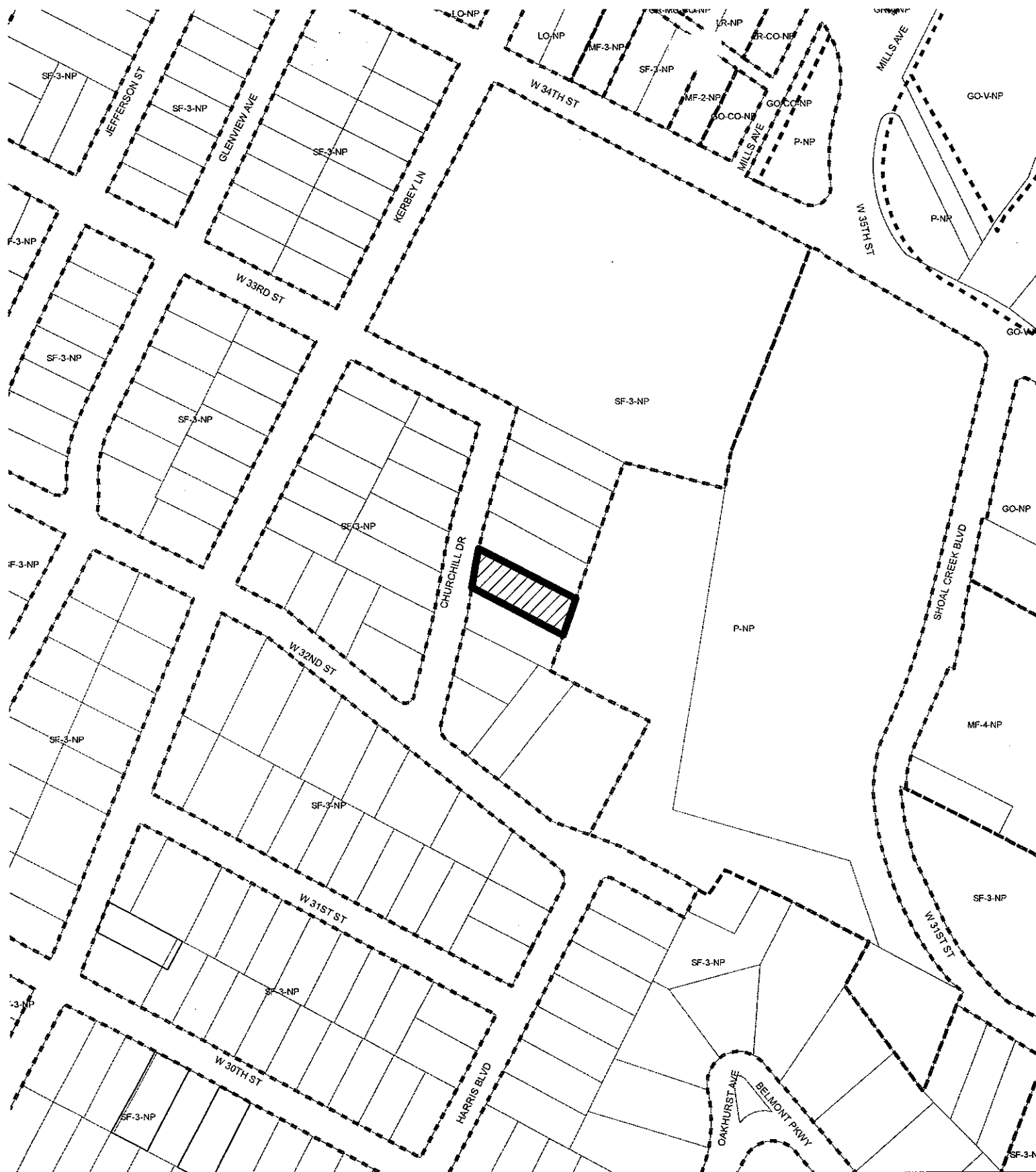
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Phone _____

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Mail Address 714 West Annie, Unit A, Austin, Texas 78704

Printed Richard Archer (512) 689-6498
Date April 4, 2011



BOARD OF ADJUSTMENTS

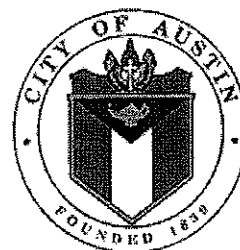


SUBJECT TRACT



ZONING BOUNDARY

CASE#: C15-2011-0048
 LOCATION: 3207 CHURCHILL DR
 GRID: H25
 MANAGER: SUSAN WALKER



This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

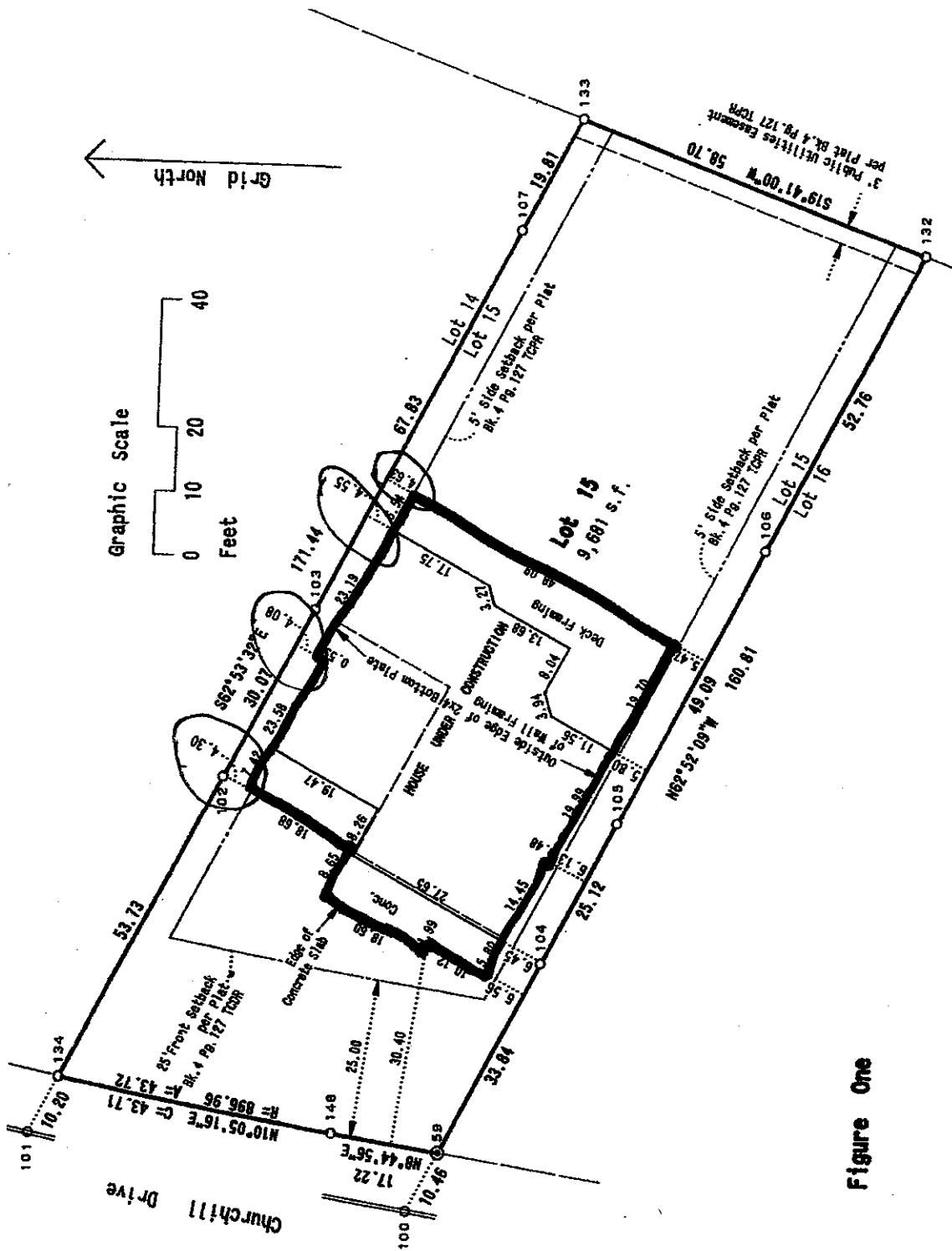


Figure One

Figure One

Refer to the Key to Survey Markers and various notes on the following pages.

Austin Tree Experts

Professional Arborist Services

(512) 996-9100

Micah's mobile phone: (512) 634-6565

micah@austintreeexperts.com

Fax: (512) 996-9116



3207 Churchill Dr
Austin, TX 78703

This letter is in regards to the proposed variance for new construction at the above property address. The construction has occurred in close proximity to a very valuable heritage live oak measured at 35" DBH. This tree has significant value not only for the property but also for the community.

My strong recommendation is to limit the amount of work done in or around the critical root zone of this tree. Any further aggravation of the root zone could cause severe and possibly growth limiting reactions from the tree. This would compromise all of my work, and the goal of everyone involved, which is to save this tree and keep it as healthy as possible during the construction process. By allowing more work to be done inside the drip line of the tree, and within very close proximity to the critical root zone, chances are great that a main artery or supporting root could and would be hit, which would lead to conditions unwanted.

My recommendation is to leave things as they are, allowing a 10" setback to keep the house where it is. This recommendation is solely based on the overall health of the tree and the implications it could have on the tree if further work was done around it.

Micah Burns, CAS

512.634.6565

Certified Arborist TX 3429A

Texas Oak Wilt Certified TOWC 0098

CIS-22-0048

KENT NEAL MCMILLAN

418 Ridgewood Road
Austin, Texas 78746
(512) 445-5441 Office
(512) 447-0746 Fax

Registered Professional Land Surveyor

Texas Registration Number 4341
email: kentmcm@swbell.net

March 30, 2011

Surveyor's Report 11-836D

Upon a Survey to Determine the Boundaries of Lots 14, 15, 16, and a Certain South Part of Lot 13, all in WESTWOOD RIDGE ADDITION in the City of Austin, Travis County, Texas

General:

At the request of Eric and Laura Buehler and of Richard and Jessica Archer, I made a survey, completed March 13, 2010, for the purpose of determining the common boundary of their adjoining parcels. The Buehler parcel is that same land conveyed to them by Sonja D. Nelson described in the deed recorded as Doc. No. 2003017537 in the Travis County Official Public Records as follows:

Lot 13, Save and Except the North Twenty Feet (20') thereof, and all of Lot 14, WESTWOOD RIDGE ADDITION, a Subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 4, Page(s) 127 of the Plat Records of Travis County, Texas

The property owned by Richard and Jessica Archer is described in the deed to them from Kirsti Karen Torres, Independent Administrator of the Estate of Guillermo Torres, Deceased, et al recorded as Doc. No. 2010086062 in the Travis County Official Public Records as being:

Lot 15 of WESTWOOD RIDGE ADDITION, an Addition in Travis County, Texas according to the map or plat thereof recorded in Book 4, Page 127, of the Plat Records of Travis County, Texas.

At the request of the Archers, I also placed permanent survey markers along the South line of their Lot 15. On that South side, the Archer parcel adjoins the land conveyed by Schroetelchen, Ltd. to Holly Carson described in the deed to her dated November 30, 2009 recorded as Doc. No. 2009199456 in the Travis County Official Public Records as being:

Lot 16, WESTWOOD RIDGE ADDITION, a subdivision in Travis County, Texas according to the map or plat recorded in Volume 4, Page 127, of the Plat Records of Travis County, Texas.

In other words, all three parcels, that of the Archers and those of the Buehlers and Carson to either side of it, are described by reference to the recorded plat of WESTWOOD RIDGE ADDITION in the respective owners' deeds.

Reference to Plat of WESTWOOD RIDGE ADDITION:

The plat of WESTWOOD RIDGE ADDITION recorded in Book 4 at Page 127 of the Travis County Plat Records (TCPR) to which the above deeds refer was executed by J.C. Bryant on May 10, 1940 as the record owner of the land subdivided. The plat shows the extension of West 33rd Street into the new subdivision, another new street known as Churchill Drive, and shows lots laid out along both. O. Leonard, Civil Engineer signed the plat, stating that he had surveyed the subdivision and marked the lot corners, including those of Lots 14 and 15, with a symbol denoted as "I.P. Corners" which I understand to mean that he set iron pipes to mark the corners, as his map of the adjoining subdivision, BRYKER-WOODS ADDITION "B", indicates he had done when laying that out in 1938.

Streets Constructed in 1940 :

According to the records of the Austin City Engineering Department :

- On 05/30/1940, the City Engineer's staff made a survey for the purpose of setting stakes for street grading and placement of gravel road base on Churchill Drive and that block of West 33rd St. West of Churchill Drive. The record of their work indicates that W.K. Kingsbury, the City surveyor, found markers in place along Churchill Drive that he evidently accepted as being the same corners shown upon the record subdivision plat executed less than three weeks earlier. Kingsbury's notes give elevations of the existing ground in the location where I found Pipe No. 57, now 24" below ground surface, that show that the top of Pipe No. 57 would have been flush with the existing ground surface as it existed in May of 1940 before street grading. The same is true of Pipes No. 87 and 62, now 20 inches and 12 inches below grade, respectively. Kingsbury's notes show that both pipes would have been essentially at the level of existing ground before street grading, which is exactly what one would expect to be true of the iron pipes that O. Leonard set to mark lot corners prior to street construction in 1940.
- On 07/16/1940, the City Engineer's staff returned to set stakes for concrete curb and gutter construction along Churchill Drive and the block of West 33rd St. West of it. The record of their work indicates that markers remained in place along the East side of Churchill Drive.
- On 08/08/1940, the City Engineer's staff returned to stake a line for a proposed sanitary sewer that was located parallel with and 1.5 ft. South of the North line of Lot 11, running across Lot 11 and down to an existing sewer main along Shoal Creek. The record of their work indicates that they found stakes in place marking the North corners of Lot 11 and that they made a survey tie to a concrete monument they found in place marking an angle point on the East line of the 5.75 acre Brykerwoods School tract. The record of their work shows that the North line of Lot 11 as originally laid out by O. Leonard in 1940 was in minor conflict (1.87 ft. or less) with the South line

of the 5.75 acre tract that the subdivider, J.C. Bryant, had conveyed to the Trustees of the Austin Public Free Schools in 1938, what is now the site of Brykerwoods Elementary School.

Abstract of Title :

I examined the early conveyances by which the subdivider of WESTWOOD RIDGE ADDITION originally sold off the lots along the East side of Churchill Drive. What I found is that Lots 13, 14, and 15 were originally conveyed in 1940 and 1941 as separate properties to different parties. In the deeds executed by J.C. Bryant, the common grantor, the lots were described by reference to the plat of WESTWOOD RIDGE ADDITION that is recorded in Book 4 at Page 127 of the Travis County Plat Records.

Sale of Lot 11:

When J.C. Bryant sold Lot 11 by deed dated September 10, 1940, he also conveyed a strip of land with it described as :

the North 89/100 of the North One (1) foot of Lot Number Twelve (12) of "WESTWOOD RIDGE" Addition, according to the plat of record on Page 127 in Book 4, of the Plat Records of Travis County, Texas

This appears to have been done to give the parcel conveyed at least 50.00 ft. of frontage on Churchill Drive. That is, the record frontage of Lot 11 as shown upon the subdivision plat is 49.11 ft., which together with the frontage of the North 0.89 ft. of Lot 12 would give, in theory, at least 50 ft. of total frontage to the aggregate conveyed.

Note that I have not delineated the North 0.89 ft. of Lot 12 on my Map No. 11-836, but show the common line of Lots 11 and 12 from which the North 0.89 ft. would be located.

Division of Lot 13:

The division of Lot 13 into two parts was done in 1947 when on the same day C.M. Miller, Jr. et ux conveyed to Edmund M. Morgan et ux (who already owned Lot 12 SAVE and EXCEPT the North 0.89 ft. thereof) that portion of Lot 13 described as :

the North Twenty (20) feet of Lot Number Thirteen (13) of "Westwood Ridge" Addition in the City of Austin, Travis County, Texas, according to the plat of record on Page 127 in Book 4 of the Plat Records of Travis County, Texas

and also conveyed to William Ray Watts et ux a parcel consisting of the remainder of Lot 13 together with Lot 14, described as :

Lot Number Thirteen (13) save and except the North Twenty (20) feet thereof, and all of Lot Number Fourteen (14) of "Westwood Ridge" Addition in the City of Austin,

Travis County, Texas, according to the plat of record on Page 127, in Book 4, of the Plat Records of Travis County, Texas

I have not traced the complete chains of title of the present Buehler, Archer, and Carson parcels from these early deeds to the present, but think it reasonable to assume that after 1947 until the present the parcels have been conveyed using essentially the same descriptions as were also used in the most recent conveyances.

Task of Resurvey :

In that all three parcels, that of the Archers and those of the Buehlers and Carson to either side of it, are described by reference to the recorded plat of WESTWOOD RIDGE ADDITION in the respective owners' deeds, the object of this resurvey was to determine where the lines of the lots shown upon that plat are located on the ground. That plat is in effect a picture of the original survey that was made on the ground in 1940 by O. Leonard prior to the construction of Churchill Drive and the block of West 33rd St. along the South side of the Brykerwoods Elementary School tract. Mr. Leonard indicated that he had placed markers at the corners of the lots as surveyed by him and at a couple of other points along the street lines. The positions of those markers remaining in place undisturbed are ordinarily considered as a matter of law to fix upon the ground the corner that each was set to mark.

Where original undisturbed markers cannot be found, then the question becomes one of examining the evidence to determine the most likely location in which the corner was originally marked. In this case, that evidence includes the calls for course and distance appearing upon Mr. Leonard's plat of WESTWOOD RIDGE ADDITION and his representation of the South line of Lot 16 as adjoining the North line of a subdivision known as BRYKER-WOODS ADDITION "B" surveyed and marked by him in 1937 and 1938 according to the plat recorded in Book 4, Page 12 TCPR.

Mistaken Call to Adjoin School Tract :

The plat of WESTWOOD RIDGE ADDITION also indicates that the North line of Lot 11 lies along the South line of the 5.75-acre tract that J.C. Bryant, the subdivider of WESTWOOD RIDGE ADDITION, had conveyed to the Trustees of the Austin Public Free Schools in 1938. However, the evidence before me is that Mr. Leonard was mistaken as to the location of the South line of the 5.75 acres and that in fact he marked the North corners of Lot 11 in conflict with the 5.75-acre school tract. The existence of the conflict is confirmed by the ties surveyed by the City Engineer's staff in August of 1940 [City Engineering Dept. Field Book 1296 Pg. 2] in connection with laying out the route of a proposed sewer main. The conflict continues to be reflected by the positions of survey markers found in place upon the ground as represented on my map.

In reconstructing Mr. Leonard's 1940 survey of WESTWOOD RIDGE ADDITION, I have considered his depiction of the North line of Lot 11 as coinciding with the South

line of the 5.75-acre public school tract to be merely his unfounded speculation. Clearly that was what he was trying to accomplish, but his plat doesn't reflect that he had even fully run that line out to determine where it actually was located and the positions in which the City Engineer's staff found the North corners of Lot 11 marked in 1940 show that he failed to realize his intention when the North line of Lot 11 was marked upon the ground, placing the North line of Lot 11 in conflict with the 5.75 acre school tract.

Destruction of Markers on Rear Line of Lots 11 through 13 :

The records of the City of Austin Wastewater Department indicate that in 1956 a 6-inch cast iron sewer main was laid along the rear of Lots 11, 12, and into Lot 13 [Sewer As-Built for Line A-3887]. The location of the main is shown in City records as being 1.5 ft. West of the rear lot line. However, from digging in the positions where Mr. Leonard's calls for course and distance from his pipes along the East line of Churchill Drive would place the rear corners, I found that in fact the sewer line appears to have been located very nearly on the rear lot line, not even 1.5 ft. offset from it as shown in the City's records. The position of the Northeast corner of Lot 11 falls on the cover of a sanitary sewer manhole built after 1956 which obviously destroyed any boundary marker remaining in place at the corner. The 1956 construction of the main evidently also destroyed Mr. Leonard's original pipes at the common corners of Lots 11 and 12, and of Lots 12 and 13.

Original Pipes along Churchill Drive :

I found a number of old iron pipes in place along Churchill Drive that I judged to most likely be those that O. Leonard placed in 1940 as shown upon the plat of WESTWOOD RIDGE ADDITION. These are shown upon my Map No. 11-836 as :

- Pipes Nos. 87, 57, and 59 marking the corners of Lot 16,
- Pipe No. 60 marking the common corner of Lots 6 and 7,
- Pipe No. 62 marking the common corner of Lots 13 and 14, and
- Pipes Nos. 51 and 52 marking the corners of Lot 11.

Pipes 87 and 57 were 20 inches and 24 inches, respectively, below grade in natural soil below a layer of gravelly road-base-type material that I took to be from the construction of Churchill Drive in 1940. This further supports my conclusion that they were placed by O. Leonard in 1940 before street construction.

Pipes 59 and 62 were 12 inches below grade in natural soil. In those locations, this is consistent with what I would expect of pipes placed by O. Leonard prior to development.

Pipes 51 and 52 were 8 inches below grade in natural soil. In their locations, this is also about what I would expect of pipes placed by O. Leonard prior to development.

Pipe 60 at the common corner of Lots 6 and 7 was in an old concrete ribbon strip that had been poured around it. The position of Pipe 60 is so consistent with what I judge to be

Mr. Leonard's original pipes on the opposite side of the street that it seems likely to me that Pipe 60 is also one of the original stakes from 1940 that remains in essentially the same position as is shown on the subdivision plat. Evidently some care was taken to preserve the position of Pipe 60 when the concrete strip was poured around it.

New Markers Along Churchill Drive :

Using the data from Mr. Leonard's 1940 survey shown upon the plat of WESTWOOD RIDGE ADDITION, I reconstructed the positions of other corners where I did not find Mr. Leonard's original pipe in place, undisturbed and I placed the new permanent markers as indicated on my map.

North line of BRYKER-WOODS ADDITION "B" :

As my map shows, I found the East corner of Lot 1, Block 4 of BRYKER-WOODS ADDITION "B" marked by Pipe No. 81. Mr. Leonard's plat of BRYKER-WOODS ADDITION "B" shows a symbol at this corner of Lot 1 in Block 4 that is unlike the circles denoting iron pipes that he shows at every other corner in the subdivision. The symbol that Mr. Leonard used at the East corner of Lot 1 is triangular, but isn't shown on the legend. Pipe No. 81 that I found at the East corner of Lot 1 was in the floodplain of Shoal Creek and had been driven over a 60d nail. It was buried 27 inches below grade by what I think was the natural process of years of sediment deposited over it in flood. Pipe No. 81 was as heavily corroded as I'd expect that a pipe set in 1937 or 1938 in that location would be. The discrepancy in the symbol used by Mr. Leonard on the plat to the contrary notwithstanding, I judged that Pipe No. 81 was most likely his mark and adopted it as fixing the North line of BYKER-WOODS ADDITION "B" and the South line of Lot 16 in WESTWOOD RIDGE ADDITION adjacent.

Prior Resurvey of Lot 16 :

In addition to the survey markers shown upon my Map No. 11-836 as marking the boundaries of Lot 16, I found the other markers shown in the sketch appearing as Figure 1 on the following page.

(CONTINUED NEXT PAGE)

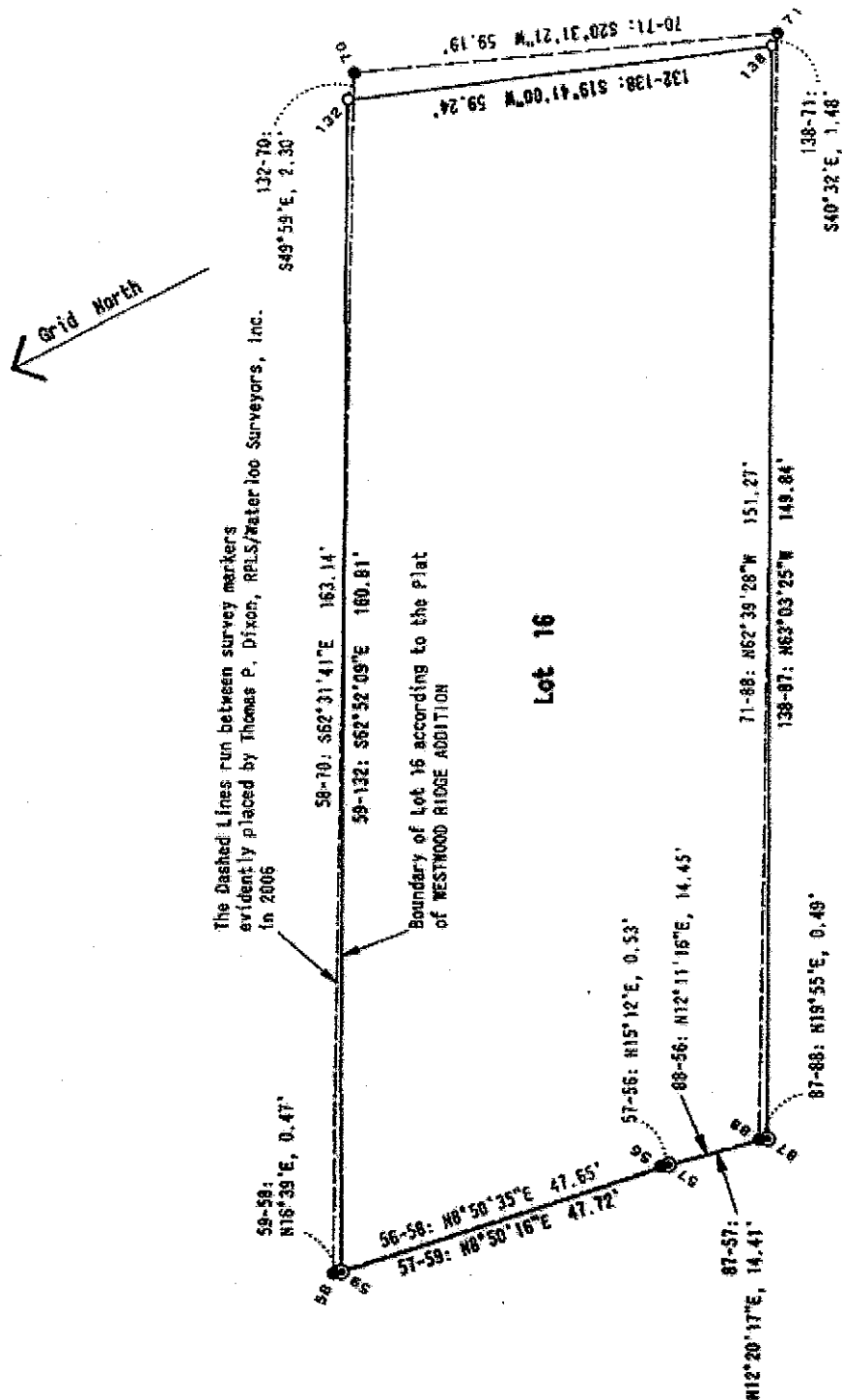


Figure 1 - Diagram Showing Other Survey Markers Found Near Corners of Lot 16

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The markers numbered 71, 88, 56, 58, and 70 on the sketch were short lengths of 1/2 in. rebar, all but Rod No. 58 with plastic caps imprinted "WATERLOO, RPLS 4323" that had evidently been placed by Thomas Dixon, RPLS in 2006 to mark the boundaries of Lot 16, but in ignorance of the existence of the original Iron Pipes Nos. 87, 57, and 59 still remaining from O. Leonard's survey of the subdivision and in ignorance of the location of the North line of BRYKER-WOODS ADDITION "B" along which Mr. Leonard's map showed that he had laid out the South line of Lot 16. Mr. Dixon's erroneous markers are described in the Key to Survey Marks appearing on my Map No. 11-836.

All of The Dixon/Waterloo markers were found basically flush with the present surface of the ground and were relatively easy to find. Those along Churchill Drive had the practical effect of concealing the original Leonard pipes nearby, defeating the use of a metal detector to search for the buried original markers by masking their fainter magnetic signatures.

After the erroneous Dixon/Waterloo markers were in place on Lot 16, in 2010 All Points Surveying were retained by Richard and Jessica Archer to determine the boundaries of Lot 15. All Points produced two very different ideas of where Lot 15 was, the second attempt at locating Lot 15 having been made with the object of correcting large errors that had been discovered in the first.

Figure 2 on the following page shows the positions of the various corners of Lot 16 as determined by All Points Surveying in their second attempt in relation to where I find the major weight of the evidence places the corners of Lot 16 as shown upon the plat of WESTWOOD RIDGE ADDITION.

(CONTINUED NEXT PAGE)

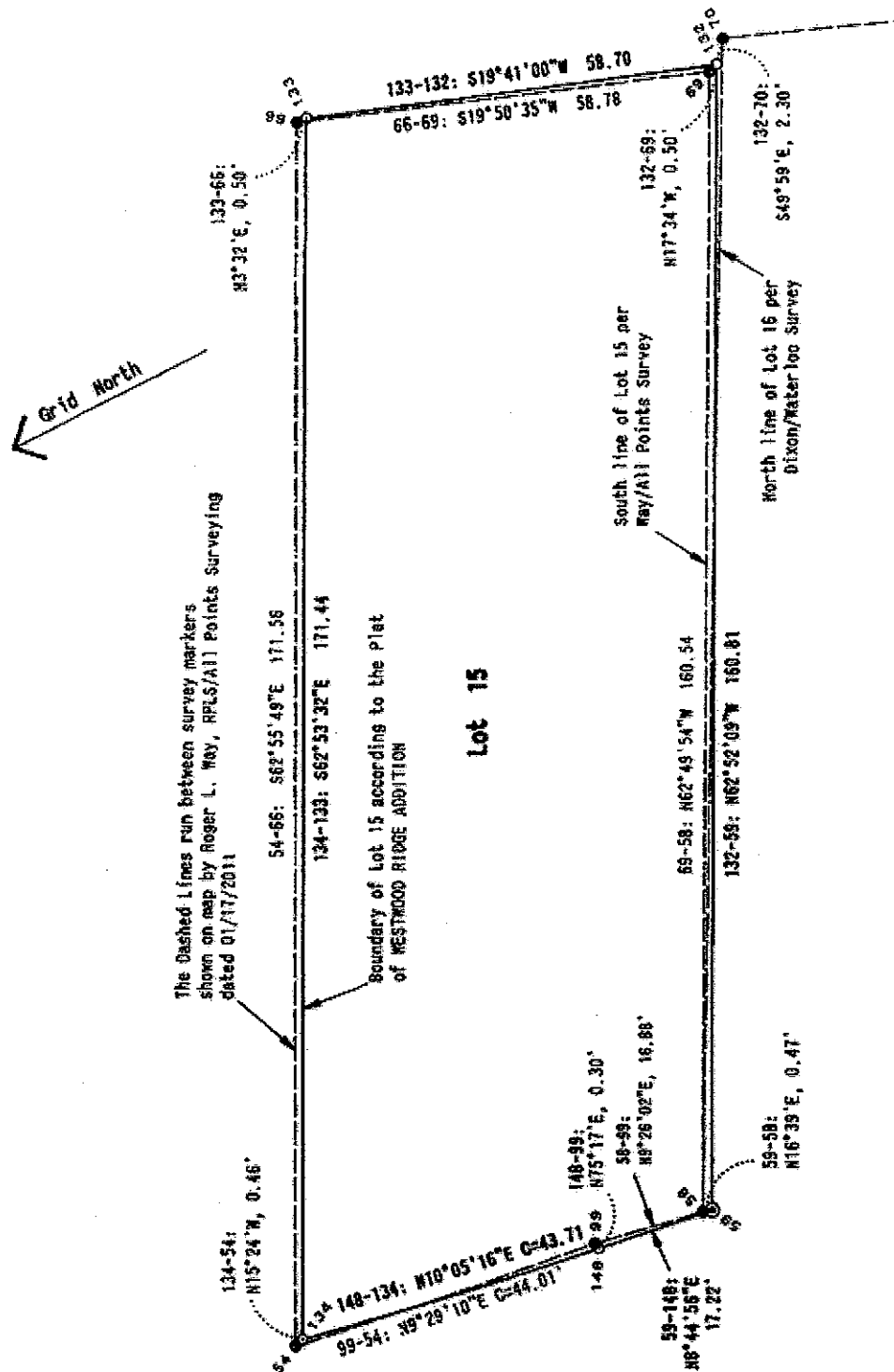


Figure 2 - Diagram Showing Other Survey Markers Found Near Corners of Lot 15

Figure 2 - Diagram Showing Other Survey Markers Found Near Corners of Lot 15

March 30, 2011

Prior Resurvey of Lot 15 :

On the street front of Lot 15, I placed a new rod and cap marker No. 148 as shown upon my map to mark the beginning of an 896.96 ft. radius curve. Beside Rod and Cap No. 148, I found an old, bent 1/2 in. iron pipe in place, the center of the base of the pipe bearing N75°17'E, 0.30 ft. from the Rod and Cap as noted in the description of Rod and Cap No. 148 in the "Key to Survey Marks" on my map. I judged that this old pipe had most likely been disturbed or tampered with. The top of the pipe had fresh hammer marks on it suggesting that it had been driven into the ground relatively recently. The pipe fell beside a 4 x 4 sign post a home builder had recently placed. Prior surveys by others indicated that the pipe was not in the same position in which it had previously been reported. I judged that the pipe did not preserve the position in which Mr. Leonard had marked the corner and disregarded it, placing my new Rod and Cap No. 148 to correctly mark the corner.

At the request of Richard Archer, I left the old, bent iron pipe with fresh hammer marks in place until he might conclude discussions with a surveying company who had earlier this year resurveyed Lot 15 in connection with the construction of a new residence.

I placed Rod and Cap No. 134 to mark the West common corner of Lots 14 and 15 as shown upon my map. Bearing N 15°24'W, 0.46 ft. from the Rod and Cap, I found an old, bent 11-inch long piece of 1/2 in. iron pipe that is designated as Pipe No. 54 on the "Key to Survey Marks". This pipe was 7 in. below grade and had been driven into gravelly fill material that I take to have been placed either during or after street construction. This pipe was apparently used in a survey of Lot 15 made for Richard and Jessica Archer by Roger L. Way, RPLS and All Points Surveying, however, the facts that the pipe:

- was evidently placed after Churchill Drive was constructed,
- is significantly out of position in relation to other old boundary markers of more definite authenticity, and
- is in contact with a steel conduit leading from a nearby utility pole, as if it had been driven to hold the conduit in place,

led me to conclude that it most likely is not one of the iron pipes placed by O. Leonard as shown upon his plat of WESTWOOD RIDGE ADDITION. Photos showing Pipe No. 54 appear on the following page.

(CONTINUED NEXT PAGE)

March 30, 2011



Pipe No. 54 (bent and leaning in gravelly fill material)



Closeup of Pipe No. 54 and old metal conduit against it.

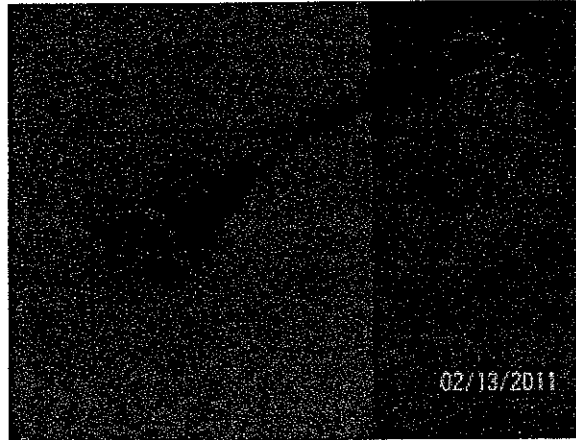
I think it likely that Pipe No. 54 is not a surveyor's mark at all, but is a stake that was driven to hold the metal conduit in place when it was originally installed. While the most recent survey of Lot 15 by All Points Surveying had evidently treated Pipe No. 54 as if it were an original, undisturbed mark of O. Leonard's survey of WESTWOOD RIDGE ADDITION in 1940, I judged the major weight of the evidence not to support that conclusion.

Rear Common Corner of Lots 14 and 15 :

Near the rear common corner of Lots 14 and 15, I found a total of three survey markers. Two of them, Iron Rods Nos. 66 and 67, are of plainly recent origin. Iron Rod No. 66 is as unruled as I would expect a marker set sometime in the last one or two years to be. I understand that Iron Rod No. 67 was placed by Michael Samford, RPLS, in about 1996.

March 30, 2011

Pipe No. 90 that I found bearing S62°53'32"E, 1.59 ft. from where I marked this corner of Lots 14 and 15 with my Rod and Cap No. 133 is what I think is most likely Mr. Leonard's original pipe or what it left of it. I found the pipe in the native yellow-grey clay and leaning well out of plumb in the orientation shown in the photo below:



Orientation of Pipe No. 90 as found

The age of Pipe No. 90 was shown by the fact that it was so severely corroded that it had broken into several fragments. The base of the pipe was 26 inches below grade and the top had evidently been buried by about 18 inches of fill material that was placed over it. At some time in the past, a length of #3 rebar had been inserted into Pipe No. 90 to give a reference point on the surface, but that bar itself was severely rusted and bent as shown, apparently by downslope soil movements.

My experience with highly expansive clay soils such as that in which I found the pipe is that survey markers that are found leaning well out of plumb in a downslope direction have migrated with the top layers of the soils. The base of the marker does not ordinarily represent its original position. The entire marker has moved by a process that also rotates it slowly out of plumb over many seasons of wet and dry weather. For this reason, I did not consider Pipe No. 90 to be in the original position in which Mr. Leonard had marked the East corner of Lots 14 and 15 in 1940. While I would not ordinarily expect that a survey marker on a slope would migrate exactly along the prolongation of the line it marked, as the position of Pipe No. 90 is shown to now be upon my map, in this case the construction using Pipe No. 90 as lying on the prolongation of the common lot line was so consistent with the rest of the Mr. Leonard's footsteps that I concluded that by sheer chance it had done just that.

The common lot line of Lots 14 and 15 marked by my Rods and Caps Nos. 134 and 133 as shown upon my map is also consistent with old evidence of occupation, running approximately parallel with and nominally along the North side of a low concrete curb about 40 ft. in length that had apparently been constructed by a former owner of Lot 15.

March 30, 2011

Southeast Corner of Lot 16 :

In the vicinity of the Southeast corner of Lot 16, I found an old 3/8 inch iron pipe that I took to be Mr. Leonard's original stake. The pipe was leaning markedly off plumb and had obviously been shifted from its original position as may be seen in the photo below.



*Old 3/8 in. Iron Pipe found leaning well off plumb
(Pt. No. 91 = Base of Pipe and Pt. No. 92 = Top of Pipe)*

The pipe has been set on a sloping hillside of yellow-gray clay. I concluded from experience that the pipe had shifted out of plumb as the top layers of the soil migrated downslope over the years. Since it has been my experience that such migration is generally consistently in one direction over a time scale of years, I considered it likely that the original position of the corner once marked by the pipe lay along the upslope prolongation of a line drawn from the top to the base of the pipe. I located the Southeast corner of Lot 16 at the point where the prolongation of the line defined by the leaning pipe intersects the North line of BRYKER-WOODS ADDITION "B" and found no particular reason to think that restoration of the Southeast corner of Lot 16 was not essentially where Mr. Leonard had originally marked the corner.

The shortage of 0.17 ft. in the length of the South line of Lot 16 in my view is hardly inconsistent with what would appear to be the ordinary errors found in Mr. Leonard's survey of WESTWOOD RIDGE ADDITION and is readily explained by the fact that the ground drops by 30.50 ft. in elevation from the Pipe No. 87 at the Southwest lot corner to Rod and Cap No. 138 at the Southeast. That presented difficulties for measuring with a steel tape in 1940 when Mr. Leonard's survey of WESTWOOD RIDGE ADDITION was made, and it is not unusual at all to find that a distances measured with steel tapes along such slopes are actually shorter than reported.

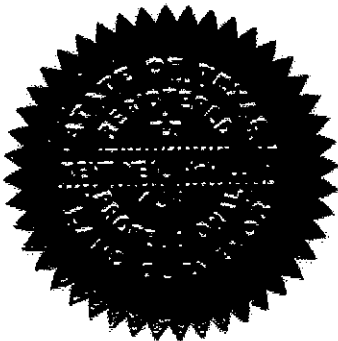
March 30, 2011

Conclusion:

To minimize future boundary confusions, I believe that it would be a very good idea to remove all of the survey markers of recent origin that Waterloo Surveyors and All Points Surveying placed with the object of marking the boundaries of Lots 15 and 16, but which my work shows do not do so. I also think that it would be a very good idea to share this report and the accompanying map with all of the interested landowners so that they may have copies to share with surveyors they may retain as some future need arises.

While my new rod and cap markers at the rear corners of Lots 14, 15, and 16 used longer sections of 5/8 in. rods than is ordinarily used by surveyors, I have some doubt about the long-term stability of any boundary marker driven into the native yellow-grey clay hillside at the rear of the lots. For this reason, I have left permanent, identifiable markers in the curb at six points along Churchill Drive and West 33rd St., have given their coordinates in a permanent reference system that should make any movements in the markers at the rear of the lots easy to detect.

Respectfully submitted,



Kent Neal McMillan

Registered Professional Land Surveyor

No. 4341

418 Ridgewood Road, Austin TX 78746

Telephone (512) 445-5441

Walker, Susan

From: Robert J. Buchanan [rjb@prideofaustin.com]
Sent: Thursday, April 07, 2011 7:38 AM
To: McDonald, John; Walker, Susan; Heretakis, Maggie
Cc: Hernandez, Tony [PDRD]; McNabb, Dan; Haught, Kathy; Barba, Leon; 'Richard Archer'; 'David Cancialosi'; dfo@prideofaustin.com
Subject: RE: 3702 Churchill
Attachments: 3207 Churchill - Form Survey; A9383 Pride of Austin-Archer dwg 3-25-11 2 OF 2 .pdf; A9383 Pride of Austin-Archer dwg 3-24-11 pdf 2 OF 2.pdf; 3207 Churchill Site Plan Corrected.pdf

All:

Attached is the email that was sent to Douglas McAfee (Inspector). Attached in this email to Douglas is the form survey (signed and sealed) that was provided to us by All Points Surveyors. I am not sure the validity of the survey that was attached by Tony, because it does not show the cut out in the garage area that was made in an attempt to correct the setback issue as told to us by All Points Surveyors. You can see this cut out in the survey that is attached in the email to Douglas which is sealed and signed by All Points Surveyors.

Also attached is the corrected Site Plan and Elevations using McMillan's revised survey that all neighbors agree is correct.

Please let me know if you have any questions or need me to come in and clarify anything.

Thanks!!

Robert J. Buchanan
 Managing Partner
 Pride of Austin Homes, LLC
 512-879-8473 Cell
 888-840-1457 Fax

From: McDonald, John [mailto:John.Mcdonald@ci.austin.tx.us]
Sent: Wednesday, April 06, 2011 2:15 PM
To: Walker, Susan; Heretakis, Maggie
Cc: Hernandez, Tony [PDRD]; Robert J. Buchanan; McNabb, Dan; Haught, Kathy; Barba, Leon; Richard Archer
Subject: FW: 3702 Churchill
Importance: High

Susan and Maggie,
 See the email below and attachments. This is a project for new construction that resulted in encroachment into the 5' side lot line. Y'all were left off of the original email.

Respectfully,
 John M. McDonald
 Planner Principal
 Residential Review/PDRD
 974-2728 - Office
john.mcdonald@ci.austin.tx.us

From: Hernandez, Tony [PDRD]
Sent: Wednesday, April 06, 2011 1:54 PM
To: 'Robert J. Buchanan'; McNabb, Dan; McDonald, John; Haught, Kathy

4/7/2011

Cc: Barba, Leon; 'Richard Archer'
Subject: RE: 3702 Churchill

Permit 10-101268 status was changed to inactive pending due to conflict with neighboring lot lines this will create a non-complying status to 3207 Churchill Dr. with an encroachment into the building line and also create a side tent encroachment. Attached is a preliminary report by a surveyor addressing the issue also attached is the survey provided at layout inspection.

Thank you,
TH

AMANDA 4.4.27.9097310 User: Tony Hernandez Signed on to AMANDA at AMANDA_prod1

File Data Search Edit Actions Reports Window Help

3207 CHURCHILL DR [BP]

Conditions | Folder | Property (1) | People (3) | Info (75) | Fee/Charge (2) | Process (18) | Document | File | Inspection Req. (4) | Comment (1) | Clock | Attachment (3)

Folder #	Ref	Can.	Yr.	Sequence	Sec.	Rev.	Type	Status
1951 28767 STS 00 W	28767	20	10	101268	000	00	BP Building Permit	Inactive Pending
2000 171446 00 0 IP	BPP-001							
2000 171897 00 0 IP	BPP-001							
2003 000357 RD 0 PR	BP-03-0							
2003 009631 00 00 BP	0300103							
2003 015869 ITR 0 CL	IT-03-01							
2003 015869 ITR 0 CC	IT-03-01							
2003 015869 ITR 0 CV	IT-2003-							
2009 030188 000 00 CC								
2009 030383 000 00 CR								
2009 031915 000 00 CV								
2009 071630 RD 00 PR	2009-07							
2009 098564 000 00 BP	2009-09							
2009 103780 000 00 CR								
2009 106929 000 00 CR								
2010 069940 R 00 PR	2010-06							
2010 074658 000 00 TP								
2010 101268 000 00 BP	2010-10							
2010 101268 000 00 PP	2010-10							
2010 101268 000 00 MP								
2010 101268 000 00 EP	2010-10							
2010 101268 000 00 DS								
2010 109442 000 00 CC								

Property

House Prefix Street Type Direction Unit Type Unit

Address 3207 CHURCHILL DRIVE

City Postal Code Rol Property Row ID

AUSTIN 78703 0119001009 555,854

Location LOT 15 WESTWOOD RIDGE ADDN Folder Unit

Indicators

Violations Properties

Current

Due \$0.00

In Date Nov 23, 2010 Issue/Approval Dec 2, 2010 Expires Oct 3, 2011

Reference File # 2010-101268 BP By Zulema Flores Final Date

Sub R-101 Single Family Houses Work New

Name 3207 CHURCHILL DR Priority

Description new 2 story steel 3 bed 2.5 bath with attached 2 car garage, front covered porch, rear screened porch and covered balcony

Conditions EROSION/SEDIMENTATION CONTROLS REQUIRED FOR ALL CONSTRUCTION. NOTHING MAY BE BUILT WITHIN OR EXTEND OVER ANY DRAINAGE EASEMENT. SIDEWALKS REQ'D. BUILT TO CITY OF AUSTIN STANDARDS. DRIVEWAY REQ'D AT LEAST TWO (2) OFF STREET PARKING SPACES REQUIRED. SETBACKS WILL BE IN ACCORD WITH APPLICABLE CITY OF

Group Permits Parent ID 10472600 Row ID 10518925

List View Related View

Show no. of rows on tabs

Copy Create Child Revert Issue/Approve Print Re-Default Email GIS Summary Process Activity

Back Forward Pull into From GIS

23 Rows Returned

start AMANDA 4.4.27.9097310 3207 Churchill Dr - N...

Tony Hernandez, Residential Building Inspector Supervisor
City of Austin, Planning Development Review Department
505 Barton Springs Road, Suite 300
Austin, Texas 78704
Office (512) 974-2323 Fax (512) 974-6342

From: Robert J. Buchanan [mailto:rjb@prideofaustin.com]
Sent: Monday, March 07, 2011 9:40 AM
To: McNabb, Dan
Cc: Hernandez, Tony [PDRD]; Barba, Leon; 'Richard Archer'
Subject: RE: 3702 Churchill

Gentlemen,

Attached is the preliminary report from the surveyor that I referenced on Friday. Look forward to our discussion at 11am today.

Robert J. Buchanan
Managing Partner
Pride of Austin Homes, LLC
512-879-8473 Cell
888-840-1457 Fax

From: McNabb, Dan [mailto:Dan.McNabb@ci.austin.tx.us]
Sent: Friday, March 04, 2011 6:53 AM
To: Robert J. Buchanan
Cc: Hernandez, Tony [PDRD]; Barba, Leon
Subject: Re: 3702 Churchill

Thanks Robert

Sent from Phone

On Mar 3, 2011, at 8:42 PM, "Robert J. Buchanan" <rjb@prideofaustin.com> wrote:

This is on my calendar.

Sent from my iPhone

On Mar 3, 2011, at 5:25 PM, "McNabb, Dan" <Dan.McNabb@ci.austin.tx.us> wrote:

When: Monday, March 07, 2011 11:00 AM-12:00 PM (GMT-06:00) Central Time (US & Canada).
Where: 505 Barton Springs Road, 300 in front of my office

~~*~*~*~*~*~*~*~*

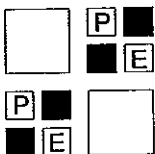
I spoke with Robert Buchanan and we can meet at this time. Robert will bring plans and a preliminary survey to the meeting.



<meeting.ics>

<ole0.bmp>

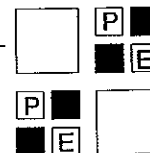
4/7/2011



PROFESSIONAL STRUCIVIL ENGINEERS, INC.

STRUCTURAL CIVIL ENVIRONMENTAL

12710 RESEARCH BLVD., SUITE #390, AUSTIN, TEXAS 78759
512.238.6422 FAX 512.258.8095 PSCE@PSCEINC.COM



January 12, 2011

Mr. Robert Buchanan
PRIDE OF AUSTIN, LLC
611 Bissonet Lane
Austin, Texas 78752

Reference: ENGINEER'S FOUNDATION LETTER
3207 Churchill Drive
Austin, Texas 78703

Mr. Buchanan:

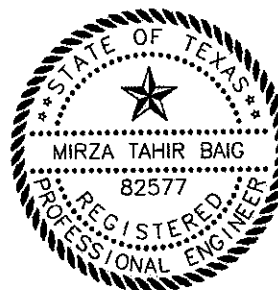
Professional Strucivil Engineers, Inc. (PSCE), has reviewed the proposed foundation for the project located at 3207 Churchill Drive and it meets or exceeds the design standards for the soil conditions found on-site.

A visual inspection performed by PSCE staff on December 27, 2010 revealed the workmanship of the foundation preparations. In particular, the inspection reviewed the grade beams, grade beam depth, and the reinforcing steel.

This letter confirms that the foundation for the residence meets or exceeds the design standards for the maximum soil conditions anticipated for the lot. Such a determination was made based upon visual observation and general knowledge of the area. Please note that geotechnical testing and / or a soil report was provided for this lot. The foundation beam excavations and reinforcement steel were observed prior to the placement of concrete and determined to comply with the minimum requirements as prescribed by the 2006 International Building Code.

If you have any questions, please call me.

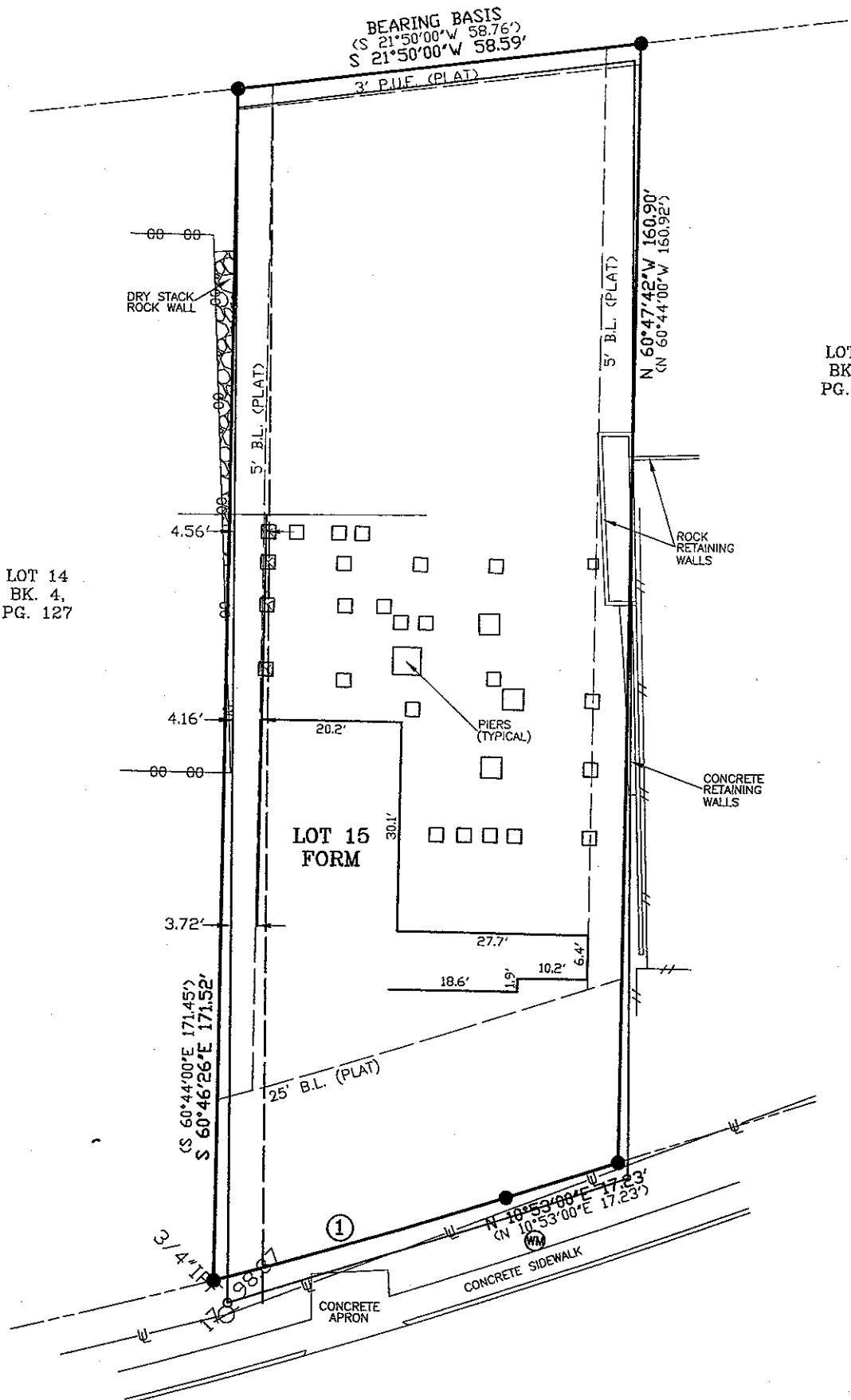
Sincerely,
PROFESSIONAL STRUCIVIL ENGINEERS, INC.



Mirza Tahir Baig, P.E.
Principal

Opinions and comments stated on this report are solely on observation of apparent condition. This report does not provide a prediction, or warranty on the future performance and/or the need for repair of the structure and other related items. Observation and/or inspection for waterproofing, water conveyance, and drainage issues are specially excluded from this scope of work.

LOT 14
BK. 4,
PG. 127



SCALE: 1"=20'

J.C. BRYANT
VOL. 318,
PG. 170

(S 21°50'00"W 58.76')
(S 22°02'43"W 58.76')
3' P.U.E. (PLAT)

LEGEND

- IRON ROD FND.
- IRON ROD SET
- PIPE FND.
- B.L. BUILDING LINE
- D.E. DRAINAGE EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT

LOT 14
BK. 4,
PG. 127

LOT 15
NO IMPROVEMENTS
SHOWN

LOT 16
BK. 4,
PG. 127

(S 60°44'00"E 171.45')
(S 60°44'00"E 171.51')

(N 60°39'49"W 160.56')
(N 60°44'00"W 160.92')

SURVEYOR'S NOTES

- () DENOTES RECORD INFORMATION
- [1] BUILDING SETBACK LINES PER CITY OF AUSTIN ZONING (SF3)

THIS MAP DOES NOT REFLECT BUILDING REQUIREMENTS WHICH MAY BE IMPOSED BY THE HOME OWNER'S ASSOCIATION.

* IMPORTANT NOTICE *

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DEPICTS ONLY THOSE BOUNDARIES, EASEMENTS AND BUILDING LINES SHOWN ON THE RECORDED PLAT. BOUNDARY AMENDMENTS, ADDITIONAL EASEMENTS AND SETBACKS MAY AFFECT LOT 15.

BEARING BASIS
①

CONCRETE APRON
CONCRETE SIDEWALK

3207 CHURCHILL DRIVE
(50' R.O.W.)

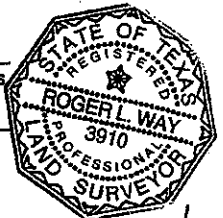
CURVE TABLE

①

C=N 12°17'00"E 43.70'
A=43.70' R=896.96'
(C=N 12°17'00"E)
(A=43.72')

LOT No. 15 BLOCK
SECTION PHASE
CITY TRAVIS COUNTY, TEXAS
AUSTIN

SUBDIVISION / ADDITION WESTWOOD RIDGE ADDITION
Book 4 Page(s) 127 Cabinet PLAT RECORDS
Volume Side
Document No.
References: RICHARD ARCHER AND JESSICA ARCHER



Roger L. Way

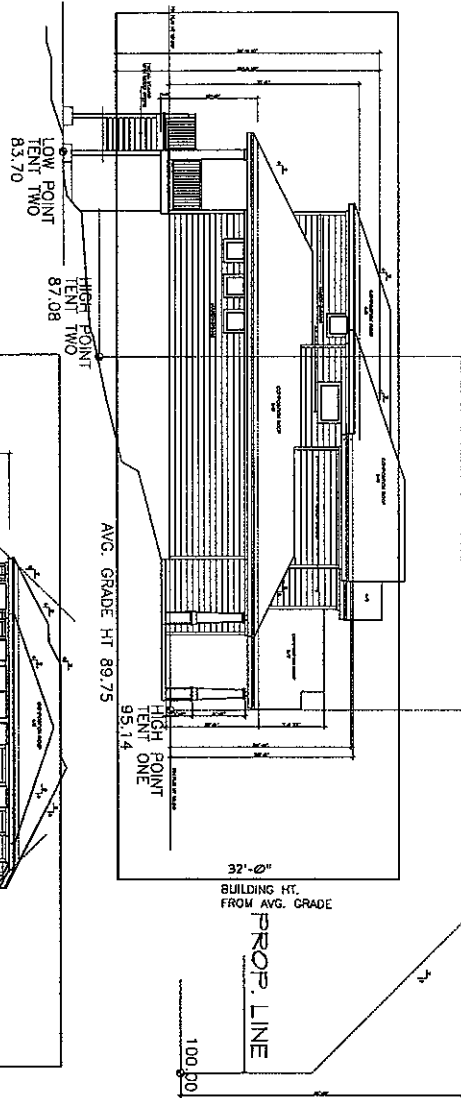


ALL POINTS SURVEYING
1714 FORTVIEW ROAD - SUITE 200
AUSTIN TX 78704
TELE: (512) 440-0071 - FAX (512) 440-0199

FIELD WORK	EL	DATE
DRAFTING	EL	01-17-11

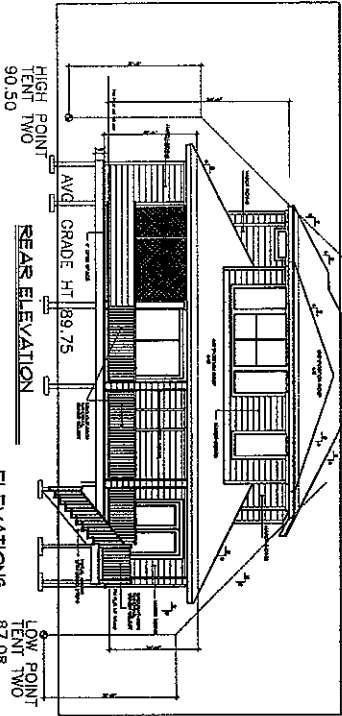
SURVEY DATE: 01-17-11
Job No. 12822810
SCALE: 1"=20'

LEFT SIDE ELEVATIONS



HIGH POINT TENT TWO 90.50

REAR ELEVATION



ELEVATIONS

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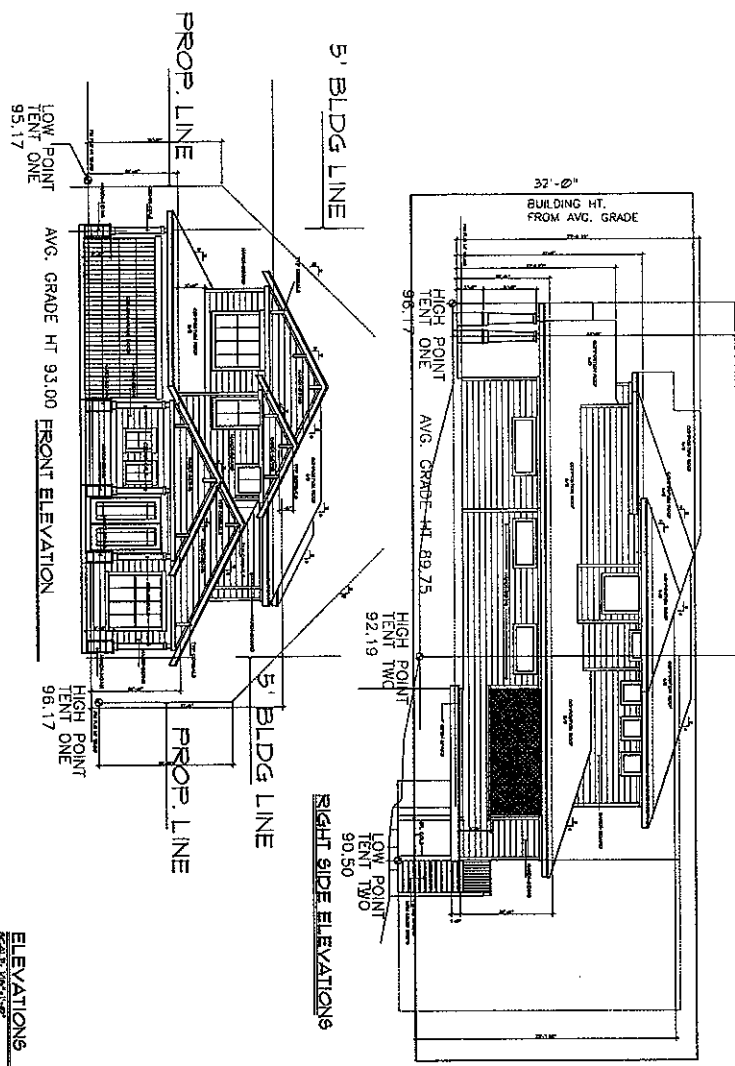


ARCHER
RESIDENCE

ARCHER
RESIDENCE

DESIGN ORIGINALS of Texas
home design center

PRIDE OF
AUSTIN



COPYRIGHT © 2010 DESIGN ORIGINALS OF TEXAS

ELEVATIONS
SCALE: 1/8" = 1'-0"

	<p>ARCHER RESIDENCE</p>	<p>DESIGN ORIGINALS of Texas home design center</p>	<p>PRIDE OF AUSTIN</p>
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Walker, Susan

From: harry mallard [harrymallard@sbcglobal.net]
Sent: Sunday, May 08, 2011 5:03 PM
To: Walker, Susan
Subject: C15-2011-0048-3207 Churchill Drive

I understand the above-referenced case (C15-2011-0048-3207 Churchill Drive) is to come before the Board of Adjustment on Monday evening. I live almost directly across the street, and I feel obliged to state my position, which I have told to both Dr. Buehler and Mr. Archer.

I think the issue lies between them, and I will support any outcome to which the Buehlers agree. However, because it is my understanding that the problem seems was created by two faulty surveys and a builder whose proceedings may have been less than prudent, I cannot support any resolution that is not acceptable to the Buehlers.

I understand and support also the Buehlers' desire for a legally binding agreement. I believe that Mr. Archer wants to act in perfectly good faith, and my impression is that the family would be a wonderful addition to the street. I hope I have written nothing that can in any way be taken as prejudicial to him. Nevertheless, having spent five years on the board of the local neighborhood association, I know too well that what builders say, and even promise, and what they do are not always the same.

I hope that you will communicate this statement to the Board in the appropriate way.

Sincerely yours,

Harry Mallard
3204 Churchill Drive
Austin, Texas 78703
512.476.1993

5/9/2011

Walker, Susan

From: dbarcinski@aol.com
Sent: Monday, May 09, 2011 5:12 PM
To: Walker, Susan
Cc: buehler@grandecom.net; JBASCIANO@austin.rr.com; sita_lakshminarayan@yahoo.com
Subject: Case #C15-2011-0048 3207 Churchill Drive

Dear Susan and Board of Adjustment Commissioners:

I am writing this letter as a neighbor opposed to the variance request at 3207 Churchill Drive in Bryker Woods. I am a neighbor within 300' of the project, an architect and a member of the Bryker Woods Neighborhood Association. I oppose this variance on many levels:

The transgression was **foreseeable and avoidable** - the sideyard setback discrepancy was noticed long before concrete was poured and before significant assets were at risk. Both the builder and the City were notified of neighbors' concerns.

Survey information and evidence of setback compliance as **not well handled**. Unstamped surveys were presented as factual and formboards were moved erroneously only to remain in violation due to unresolved survey confusion.

Despite these missteps, the Buehlers have been willing to work with their neighborhoods to clarify and codify the conditions along the shared property line. Now at this eleventh hour, the transgressor has **withdrawn from their commitment to work together in a neighborly fashion**.

I believe the garage portion of this transgression **can be remedied without any threat to Heritage Trees** and footings closest to the Heritage Tree do not require relocation and are not currently out of setback compliance.

At many presentations to the neighborhood, the City has repeatedly asked BWNA and individuals keep a vigilant eye for transgressions of the Land Development Code and BWNA has consistently tried to do so. Granting this variance would be contrary to the procedure that City has asked us to follow and detrimental to the Buehlers who have tried to act so professionally and neighborly in this matter.

The applicant has no hardship in this case. They ignored the concerns of neighbors and fast tracked this project in the face of a known problem. Their inability to get at the root of the problem and their inconsistent response (multiple surveys / multiple stories) are self imposed hardships, not a condition of the lot. Assets at risk by proceeding without utmost care are the result of a willful act, not an inevitability of residential construction. Their reversal of a willingness to work together does not seem to be in good faith.

In my opinion, Ignorance, inconsistency, willfulness and bad negotiation should not be rewarded with a variance.

Derek Barcinski

5/12/2011

Walker, Susan

From: Desiree Brutocao [dbrutocao@mac.com]
Sent: Monday, May 09, 2011 4:02 PM
To: Walker, Susan
Subject: Case # C15-2011-0048 3207 Churchill Drive

Dear Ms. Walker,

I am writing in regards with the application for a variance for 3207 Churchill Drive and my support of the opposition filed by Eric and Laura Buehler.

I would like to state at the outset of this letter that Eric and Laura Buehler are the best neighbors we could ever hope for. We are starting a major remodeling job on our house right now, and one of the reasons we decided to remodel rather than sell/move is our very supportive and wonderful relationship with Eric and Laura. I understand from the Buehlers that the agent and attorney for Mr. and Mrs. Archer told them he intends to indicate that Eric and Laura are hostile and uncompromising, and I would say that this is an undeserved slight on their characters. I am hoping that there is a misunderstanding by the Buehlers regarding this intention to paint an unflattering picture of them. They are supremely good neighbors and people, and are very well respected and admired in our house and in our neighborhood.

We have met with Richard and Jessica several times since they bought the lot to build their house. We were first introduced to the Archers at a dinner party hosted by the Buehlers to welcome the Archers to our neighborhood. Laura also invited them to attend our Halloween neighborhood party and to go trick-or-treating in the neighborhood with us. From the outset, the Buehlers have welcomed the Archers to the neighborhood.

About a month ago, Richard and Jessica stopped by our house to tell us about the hearing for the variance. I relayed that we would support the Buehlers, and they both assured me (Scott, my husband, was not

here) that they were very close to an agreement with the Buehlers about the issues between them and they did not anticipate a problem.

Richard Archer stated that many of the items the Buehlers were proposing (although this was before he received the written proposal, so he was not commenting on the specific terms) were issues they would have to address regardless of any offset issues (ie, drainage and landscaping). The Buehlers have told us that they would not oppose the variance if they were able to work out an agreement with the Archers, so I assumed this matter was all clear. We received a letter from the Buehlers regarding the proposed terms of the agreement with the Archers and explaining their reasoning. Again, I thought (and was

relieved) that it seemed the issues were going to be resolved, and that (1) Eric and Laura could feel comforted by some protections after a series of violations on the part of the Archers, (2) the Archers could continue to build their home, and (3) at someday in the future, this would all blow over and we would have great neighbors.

If you would, could you distribute this letter to all of the BOA members? I appreciate that you have taken the time to read this email. Thank you for the work you do for our neighborhoods.

Sincerely,

Desiree Brutocao
3213 Churchill Drive
Austin, TX 78703
(512) 947-6355
dbrutocao@mac.com